

**HB 2975** - S COMM AMD

By Committee on Financial Institutions, Housing & Consumer  
Protection

ADOPTED 03/01/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 21.20.320 and 1998 c 15 s 14 are each amended to read  
4 as follows:

5 The following transactions are exempt from RCW 21.20.040 through  
6 21.20.300 and 21.20.327 except as expressly provided:

7 (1) Any isolated transaction, or sales not involving a public  
8 offering, whether effected through a broker-dealer or not; or any  
9 transaction effected in accordance with any rule by the director  
10 establishing a nonpublic offering exemption pursuant to this subsection  
11 where registration is not necessary or appropriate in the public  
12 interest or for the protection of investors.

13 (2) Any nonissuer transaction by a registered salesperson of a  
14 registered broker-dealer, and any resale transaction by a sponsor of a  
15 unit investment trust registered under the Investment Company Act of  
16 1940 pursuant to any rule adopted by the director.

17 (3) Any nonissuer transaction effected by or through a registered  
18 broker-dealer pursuant to an unsolicited order or offer to buy; but the  
19 director may by rule require that the customer acknowledge upon a  
20 specified form that the sale was unsolicited, and that a signed copy of  
21 each such form be preserved by the broker-dealer for a specified  
22 period.

23 (4) Any transaction between the issuer or other person on whose  
24 behalf the offering is made and an underwriter, or among underwriters.

25 (5) Any transaction in a bond or other evidence of indebtedness  
26 secured by a real or chattel mortgage or deed of trust, or by an  
27 agreement for the sale of real estate or chattels, if the entire  
28 mortgage, deed of trust, or agreement, together with all the bonds or  
29 other evidences of indebtedness secured thereby, is offered and sold as

1 a unit. A bond or other evidence of indebtedness is not offered and  
2 sold as a unit if the transaction involves:

3 (a) A partial interest in one or more bonds or other evidences of  
4 indebtedness secured by a real or chattel mortgage or deed of trust, or  
5 by an agreement for the sale of real estate or chattels; or

6 (b) One of multiple bonds or other evidences of indebtedness  
7 secured by one or more real or chattel mortgages or deeds of trust, or  
8 agreements for the sale of real estate or chattels, sold to more than  
9 one purchaser as part of a single plan of financing; or

10 (c) A security including an investment contract other than the bond  
11 or other evidence of indebtedness.

12 (6) Any transaction by an executor, administrator, sheriff,  
13 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

14 (7) Any transaction executed by a bona fide pledgee without any  
15 purpose of evading this chapter.

16 (8) Any offer or sale to a bank, savings institution, trust  
17 company, insurance company, investment company as defined in the  
18 Investment Company Act of 1940, pension or profit-sharing trust, or  
19 other financial institution or institutional buyer, or to a broker-  
20 dealer, whether the purchaser is acting for itself or in some fiduciary  
21 capacity.

22 (9) Any transaction effected in accordance with the terms and  
23 conditions of any rule adopted by the director if:

24 (a) The aggregate offering amount does not exceed five million  
25 dollars; and

26 (b) The director finds that registration is not necessary in the  
27 public interest and for the protection of investors.

28 (10) Any offer or sale of a preorganization certificate or  
29 subscription if (a) no commission or other remuneration is paid or  
30 given directly or indirectly for soliciting any prospective subscriber,  
31 (b) the number of subscribers does not exceed ten, and (c) no payment  
32 is made by any subscriber.

33 (11) Any transaction pursuant to an offer to existing security  
34 holders of the issuer, including persons who at the time of the  
35 transaction are holders of convertible securities, nontransferable  
36 warrants, or transferable warrants exercisable within not more than  
37 ninety days of their issuance, if (a) no commission or other  
38 remuneration (other than a standby commission) is paid or given

1 directly or indirectly for soliciting any security holder in this  
2 state, or (b) the issuer first files a notice specifying the terms of  
3 the offer and the director does not by order disallow the exemption  
4 within the next five full business days.

5 (12) Any offer (but not a sale) of a security for which  
6 registration statements have been filed under both this chapter and the  
7 Securities Act of 1933 if no stop order or refusal order is in effect  
8 and no public proceeding or examination looking toward such an order is  
9 pending under either act.

10 (13) The issuance of any stock dividend, whether the corporation  
11 distributing the dividend is the issuer of the stock or not, if nothing  
12 of value is given by stockholders for the distribution other than the  
13 surrender of a right to a cash dividend where the stockholder can elect  
14 to take a dividend in cash or stock.

15 (14) Any transaction incident to a right of conversion or a  
16 statutory or judicially approved reclassification, recapitalization,  
17 reorganization, quasi reorganization, stock split, reverse stock split,  
18 merger, consolidation, or sale of assets.

19 (15) The offer or sale by a registered broker-dealer, or a person  
20 exempted from the registration requirements pursuant to RCW 21.20.040,  
21 acting either as principal or agent, of securities previously sold and  
22 distributed to the public: PROVIDED, That:

23 (a) Such securities are sold at prices reasonably related to the  
24 current market price thereof at the time of sale, and, if such broker-  
25 dealer is acting as agent, the commission collected by such broker-  
26 dealer on account of the sale thereof is not in excess of usual and  
27 customary commissions collected with respect to securities and  
28 transactions having comparable characteristics;

29 (b) Such securities do not constitute the whole or a part of an  
30 unsold allotment to or subscription or participation by such broker-  
31 dealer as an underwriter of such securities or as a participant in the  
32 distribution of such securities by the issuer, by an underwriter or by  
33 a person or group of persons in substantial control of the issuer or of  
34 the outstanding securities of the class being distributed; and

35 (c) The security has been lawfully sold and distributed in this  
36 state or any other state of the United States under this or any act  
37 regulating the sale of such securities.

1 (16) Any transaction by a mutual or cooperative association meeting  
2 the requirements of (a) and (b) of this subsection:

3 (a) The transaction:

4 (i) Does not involve advertising or public solicitation; or

5 (ii) Involves advertising or public solicitation, and:

6 (A) The association first files a notice of claim of exemption on  
7 a form prescribed by the director specifying the terms of the offer and  
8 the director does not by order deny the exemption within the next ten  
9 full business days; or

10 (B) The association is an employee cooperative and identifies  
11 itself as an employee cooperative in advertising or public  
12 solicitation.

13 (b) The transaction involves an instrument or interest, that:

14 (i)(A) Qualifies its holder to be a member or patron of the  
15 association;

16 (B) Represents a contribution of capital to the association by a  
17 person who is or intends to become a member or patron of the  
18 association;

19 (C) Represents a patronage dividend or other patronage allocation;  
20 or

21 (D) Represents the terms or conditions by which a member or patron  
22 purchases, sells, or markets products, commodities, or services from,  
23 to, or through the association; and

24 (ii) Is nontransferable except in the case of death, operation of  
25 law, bona fide transfer for security purposes only to the association,  
26 a bank, or other financial institution, intrafamily transfer, ~~((or))~~  
27 transfer to an existing member or person who will become a member, or  
28 transfer by gift to any person organized and operated as a nonprofit  
29 organization as defined in RCW 84.36.800(4) that also possesses a  
30 current tax exempt status under the laws of the United States, and, in  
31 the case of an instrument, so states conspicuously on its face.

32 (17) Any transaction effected in accordance with any rule adopted  
33 by the director establishing a limited offering exemption which  
34 furthers objectives of compatibility with federal exemptions and  
35 uniformity among the states, provided that in adopting any such rule  
36 the director may require that no commission or other remuneration be  
37 paid or given to any person, directly or indirectly, for effecting

1 sales unless the person is registered under this chapter as a broker-  
2 dealer or salesperson."

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3 On page 1, line 2 of the title, after "Washington;" strike the  
4 remainder of the title and insert "and amending RCW 21.20.320."

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